

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
GRANTED BY KING COUNTY TO
HELEN P. WILLIAMS,

PETER and LOIS WYWROT,
GEORGE and ELEANOR ROUNDS,
GREG and DARLENE O'FARRELL,
and WILLIAM KIRKHAM,

Appellants,

v.

KING COUNTY and
HELEN P. WILLIAMS,

Respondents.

SHB No. 83-53

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a shoreline substantial development permit granted by King County to Helen P. Williams, came on for hearing before the Shorelines Hearings Board; Gayle Rothrock, Chairman, David Akana, Lawyer Member, Lawrence J. Faulk, Vice Chairman (presiding), Rodney M. Kerslake, Beryl Robison, and Nancy R. Burnett, convened at Lacey, Washington, on May 3, 1984.

1 Appellants were represented by attorney at law Mark Jaffe.
2 Respondent King County did not appear. Respondent Helen P. Williams
3 was represented by attorneys Russell W. Newman and R. Patrick
4 McGreevy. Reporter Janet Neer recorded the proceedings.

5 Witnesses were sworn and testified. Exhibits were examined. From
6 testimony heard and exhibits examined, the Board makes these

7 FINDINGS OF FACT

8 I

9 This matter arises on Lake Washington on Rainier Avenue South near
10 Renton in King County. Respondent Helen Williams and her husband own
11 a single-family residence on a lakefront lot about 50 feet wide. In
12 front of their home, which they have owned since 1954, is a quonset
13 hut and pier constituting a covered moorage which has been used as a
14 boat house. Respondents wish to repair and rebuild this quonset hut,
15 pier and the pilings upon which the quonset hut sits.

16 II

17 On or before August 4, 1982, the respondent began construction of
18 a new pier and dock to house the quonset hut. The hut had been
19 removed and some of the pilings for the dock had been removed. Some
20 new piles were in place.

21 A Building and Land Development Division Shoreline Inspector
22 discovered the work being done and a stop work order was issued. On
23 or about September 14, 1982, work was resumed in violation of the stop
24 work order.

25 The Building and Land Development Division subsequently advised

26 FINAL FINDINGS OF FACT,
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1 the respondent that she could not rebuild the boathouse but could
2 apply for permits to build a conventional pier.

3 III

4 On November 15, 1983, the respondents appealed this decision and a
5 code enforcement hearing was held before a zoning and subdivision
6 examiner on January 4, 1983. On January 28, 1983, the decision of the
7 zoning and subdivision examiner was released. The examiner wrote "it
8 is my conclusion that the nature of the improvements to the boathouse
9 are more in the nature of upkeep, repair and maintenance as set out in
10 KCC 21.52.050. It does not appear that there has been storm damage,
11 an act of God, or disrepair up to 50% of its value as contemplated in
12 KCC 21.52.040." The examiner granted respondent's appeal but noted
13 that the applicant must obtain a shorelines substantial development
14 permit.

15 IV

16 On February 10, 1983, respondent filed an application for a
17 substantial development permit. On July 26, 1983, a hearing on said
18 application was held before a King County shorelines hearings
19 officer. Testimony concerning issues dealt with in the code
20 enforcement hearing was not allowed.

21 V

22 On October 31, 1983, a shorelines substantial development permit
23 to repair covered moorage on pilings was granted to respondents by
24 King County.

1 VI

2 On November 30, 1983, appellants, feeling aggrieved by the
3 decision filed an appeal with this Board.

4 VII

5 The two issues to be decided by this Board are; (1) whether the
6 issues raised within Subsection 25.32.060(B) of the King County Code
7 [Shoreline Master Program (KCSMP)] have been foreclosed by a prior
8 decision (res judicata and collateral estoppel), thereby halting this
9 appeal; (2) does the permit meet the requirements of Subsection
10 25.32.060(B) and 21.52.050 of the King County Code.

11 VIII

12 The burden of proving inconsistency with the SMA and KCSMP is on
13 the appellants.

14 IX

15 The applicable portions of the King County codes are as follows;

16 KCSMP 25.32.060 Alteration or Reconstruction of
17 Nonconforming Use or Development.

18 A. Applications for substantial development or
19 building permits to modify a nonconforming use or
development may be approved only if:

20 1. The modifications will make the use or
development less nonconforming; or

21 2. The modifications will not make the use or
22 development more nonconforming.

23 B. A use or development, not conforming to existing
24 regulations, which is destroyed, deteriorated, or
25 damaged more than fifty percent of its fair market
26 value at present or at the time of its destruction by
fire, explosion, or other casualty or act of God, may
be reconstructed only insofar as it is consistent
with existing regulations.

1 KCC 21.52.050 Structural Alteration or Enlargement
2 of Nonconforming Buildings.

3 * * *

4 C. Upkeep, repairing and maintenance of
5 Nonconforming buildings is permitted.

6 X

7 Respondent presented expert testimony showing the fair market
8 value of this particular boathouse ranged between \$36,000 and
9 \$50,000. The cost of moving, replacing and cosmetically restoring the
10 moorage covering is approximately \$2,500. The cost of repairing the
11 pilings was approximately \$6,000. The cost of repairing the deck
12 around the boat house is approximately \$4,000. Thus the total cost of
13 improving the boathouse both structurally and cosmetically is
14 approximately \$12,500.

15 XI

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board comes to the following

19 CONCLUSIONS OF LAW

20 I

21 We review the proposed development for consistency with the
22 applicable (King County) shoreline master program and the provisions
23 of the Shoreline Management Act (SMA). RCW 90.58.140.

24 II

25 The Board concludes that res judicata does not apply since the
26 zoning examiners decision was a result of code enforcement proceedings

27 FINAL FINDINGS OF FACT,
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1 and the shorelines hearings officer's decision was a result of a
2 substantial development permit application. Thus the subject matter
3 was different and the cause of action was different. Therefore the
4 test for res judicata was not met.

5 III

6 The Board concludes that collateral estoppel also does not apply
7 since the appellants were not parties to the prior code enforcement
8 proceedings and were not in privity with the county in the code
9 enforcement proceedings. Therefore the test for collateral estoppel
10 was not met.

11 IV

12 All proceedings before the Shorelines Hearings Board are de novo
13 and all relevant issues and evidence may be heard. WAC 461-08-174
14 states that hearings before the Shoreline Hearings Board "shall be
15 conducted de novo unless otherwise required by law."

16 V

17 There was no persuasive evidence presented that there has been
18 storm damage, an act of God, or deterioration up to 50 percent of pier
19 and boathouse value as contemplated by KCSMP 25.32.060(B).

20 VI

21 The Board, concludes that appellant has not proven that the
22 substantial development permit granted by King County authorizes
23 development which is inconsistent with the Shoreline Management Act or
24 the KCSMP.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

The shoreline substantial development permit granted by King County to respondents is affirmed.

DONE this 20th day of June, 1984.

SHORELINES HEARINGS BOARD

 6/14/84
LAWRENCE J. FAULK, Vice Chairman


GAYLE ROTHROCK, Chairman

See Concurring Opinion
DAVID AKANA, Lawyer Member

See Concurring Opinion
NANCY R. BURNETT, Member

See Concurring Opinion
RODNEY M. KERSLAKE, Member


BERYL ROBISON, Member

1 CONCURRING:

2 The agreed issues set forth in the pre-hearing order and entered
3 by the presiding officer are summarized in Finding of Fact VII. The
4 agreed issues normally control the course of this proceeding as
5 provided in the pre-hearing order. The result of the foregoing
6 decision leaves the parties in a substantially proper position. For
7 that reason, we would concur in the result.

8 We agree with that portion of the decision by the zoning and
9 subdivision examiner which concluded that "the nature of the
10 improvements were upkeep, repair and maintenance as contemplated in
11 KCC 21.52.050." The Shoreline Management Act excludes normal mainte-
12 nance or repair of existing structures or developments, including
13 damage by accident, fire, or elements from the definition of
14 "substantial development."¹ Consequently, no "substantial development
15 permit appears to be required for the proposed improvements."² These
16 issues, as we see them, were not before the Board and we simply note
17 them in passing.

18 DONE this 20th day of June, 1984.

19 SHORELINES HEARINGS BOARD

20 David Akana
21 DAVID AKANA, Lawyer Member

22 Rodney M. Kerslake
23 RODNEY M. KERSLAKE, Member

24 Nancy R. Burnett
25 NANCY R. BURNETT, Member

26 1 RCW 90.58.030(3)(3)(1); KCC 25.08.570.

27 2 RCW 90.58.140(2); KCC 25.32.010(2).